

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
 SURAT BENCH, SURAT**  
 श्री सी.एम.गर्ग, न्यायिक सदस्य तथा श्री ओ.पी.मीना, लेखा सदस्य के समक्ष  
**BEFORE SHRI C.M.GARG, JUDICIAL MEMBER  
 AND SHRI O.P.MEENA, ACCOUNTANT MEMBER**

आ.अ.सं./I.T.A No.2582/Ahd/2014/SRT  
 निर्धारण वर्ष/Assessment Year : 2010-11

Assistant Commissioner of Income Tax, Circle -6, Surat - 395001.	<b>Vs.</b>	Bardoli Vibhag Gram Vikas Co- Operative Credit Society Ltd., Sardar Baug Bardoli, District Surat, Surat - 396 420 <b>[PAN: AAATB 8135 B]</b>
अपीलार्थी <b>Appellant</b>		प्रत्यर्थी/ <b>Respondent</b>

निर्धारिती की ओर से /Assessee by	Shri Mitish S. Modi, CA
राजस्व की ओर से /Revenue by	Shri Arvind Kumar Singh, Sr.DR

सुनवाई की तारीख/ Date of hearing:	20-06-2018
उद्घोषणा की तारीख/Pronouncement on	28-06-2018

**आदेश /ORDER**

**PER O. P. MEENA, ACCOUTANT MEMBER:**

1. This appeal by the Revenue is directed against the order of learned Commissioner of Income tax (Appeals) -I, Surat (in short “the CIT (A)”) dated 27.06.2014 pertaining to Assessment Year 2010-11, which in turn has arisen from the order passed by the Assistant Commissioner of Income Tax, Circle-6, Surat, (in short “the AO”) dated 30.03.2013 under section 143(3) of Income Tax Act, 1961 (in short ‘the Act’).

## 2. Grounds raised by Revenue read as under :

*"1. On the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in allowing the deduction claimed by the assessee u/s.80(2)(d) to the tune of Rs.1,40,52,159/-.*

*2. On the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in concluding that there is no nexus between the interest/dividend income earned from the co-op. societies and the interest expenditure incurred by the assessee on borrowed funds on the ground that there is no proof of the investment of such interest bearing funds to earn the said income without appreciating the fact that the assessee has failed to substantiate the above in full measure with proper evidences.*

**3.** Since, the above grounds are inter-connected, hence, these are being considered together. Succinct facts of the case that the assessee is a Co-operative credit society engaged in the business of providing credit facilities exclusively to its members by accepting deposits from its members and lending to them. In the process, it earns interest income from members. Assessee earns income on investment too. Assessee filed return of income on 21.09.2010 declaring total income at Nil income. The case was taken up for scrutiny and notice u/s.143(2) of the Act dated 29.08.2011 was issued and duly served upon the assessee by RPAD. During the year under consideration, assessee has earned gross income of Rs.5,58,09,858.90/- and after claiming deductions in respect of the expenses allowable as per the Income Tax Act, shown income from business and profession at Rs.1,40,52,159/-. Thereafter, the assessee claimed deduction u/s.80P of the Act on the said income and declared taxable income at Rs.80,870/-. And also the assessee claimed following income as eligible income for deduction u/s.80P of the Income Tax Act.

A	Basic deduction	Rs.50,000/-
B	Interest and dividend from other co-op. socieites.	Rs.3,34,23,194/-
	Total	Rs.3,34,73,194/-

4. The AO further observed that the assessee earned gross interest income of Rs.4,45,74,034/- during the year under consideration. As per him whatever is accepted as deposits from the members by the assessee were given to the members of the assessee society as loan and the excess amounts were deposited in the bank etc. and earned interest income from such loans and deposits. On the deposits accepted by the assessee from its members, interest was paid and simultaneously, on the amount of loans given to the members and deposits in the bank, the assessee has earned interest income. Thus, as per AO, the assessee has paid interest for earning the interest income and interest expenses claimed in the profit and loss account are directly connected with the interest income shown by the assessee. The AO bifurcated the interest income/expenses, along with income/expenditure under the different other heads as under :

Expenditure	Amount	Income	Amount
Interest on deposits	3,30,70,564.7	Interest received from the Co-op. (Claim as	3,34,23,194.00

		eligible income)	
Salary Expenses	30,19,013	Interest from others	1,11,50,840.22
Other Expenses	1,51,58,829.4	Locker rent	2,97,750.00
Profit	45,61,451.78	Penal Interest	4,30,379.00
		Dividend	94,80,884.88
		Share Transfer fee	894.00
		Delayed fee	875.00
		Profit on sale of mutual	6,78,446.80
		Commission Income	3,46,595.00
		Other Income	0.00
<b>Total</b>	<b>5,58,09,858.90</b>	<b>Total</b>	<b>5,58,09,858.90</b>

5. Aggrieved with the order of AO, the assessee filed an appeal before CIT(A). Assessee filed submissions in support of its claim. The CIT(A) has allowed the appeal of the assessee by observing as under:

*"5. I have considered the facts of the case, basis of disallowance made by AO and submissions of appellant. The AO has worked out the deduction u/s.80P(2)(d) at Rs.88,33,839/- by excluding the interest of Rs.2,45,89,355/- received by appellant from Surat Dist. Co-operative Bank Ltd. This amount is further reduced on proportionate basis by taking into account the total receipts and total expenses as shown by appellant and finally the allowable deduction is worked out by him at Rs.22,24,361/-. Thus, the AO has not allowed the deduction on the interest and dividend received from Co-operative bank and also on gross amount of interest and dividend received from other Co-operative societies. This stand taken by AO does find support from the facts of the case. As submitted, the appellant society has been statutorily investing its surplus fund from the year 1992 with other Co-operative Societies which include Co-operative Banks. On such investments, the appellant has been receiving interest and dividend which has been claimed as deduction u/s.80P(2)(d) of the Act. It is not a case where this income has derived out of investments made during the year for which the appellant has incurred any expenditure directly or indirectly. An analysis of interest expenses would show that the same has been incurred by way of interest paid to member societies saving*

accounts, FD accounts and other deposits. It is evident from the details of interest expenses that there is no direct or indirect nexus between such expenses and interest and dividend earned from investments made with other Co-operative societies. The pro-rata allocation of interest expenses resulting in part disallowance of deduction has been done without examining the issue in details or appreciating the facts in its correct prospective. Therefore, in absence of any expenses directly or indirectly co-related to such income, the part disallowance of the deduction is not justified. On the identical facts, Hon'ble Jurisdictional ITAT in the case DCIT Vs. The Surat Dist. Co-operative Mills Producer Union Ltd. ITA No.367 & 3386/Ahd/2010 & ITA No.1739/Ahd/2011 vide order dated 02.08.2013 has dealt with the issue and after discussing the various decisions of different Courts and Benches of ITATs, has held as under:-

"5. We have heard the rival contentions and perused the material on record. It is undisputed fact that the appellant had invested surplus fund right from 1951 with other co-operative society. On such investment the appellant had been receiving interest and dividend which had been claimed as deduction u/s.80P(2)(d). It is not a case that appellant had either earned income or borrowed fund and invested in this investment and deposits.....

Further the A.O. considered Hon'ble Supreme Court decision in Distributors (Baroda) P. Ltd. Vs. Union of India [1985] 155 ITR 120 (SC), wherein, it was held that deduction u/s.80M is to be calculated with reference to amount on dividend computed in accordance with the provisions of the act and forming on the gross total income and not with reference to full amount of dividend received by the assessee. The Hon'ble Supreme Court decision is squarely applicable on deduction under any section in Chapter VIA and is to be allowed on the net income. However, in the assessee's case, interest expenses were incurred for acquiring debenture, deposit with member society, Fix Deposit of member society, employee saving accounts, interest on over draft facilitate from bank and bank commission, which was claimed by the appellant u/s.80P(2)(d)(a)(i). For the sake of convenience, we are reproducing sections as under :

**Section 80P(2)(a)(i)-** Carrying on the business of banking of or providing credit facilities to its members.

**Section 80P(2)(d)-** In respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income.

After considering the factual as well as legal position on this issue, the appellant had not incurred any expenditure on the earning of the dividend and interest from other co-operative society as this investment was made long back. No new investment had been made by the appellant during the year under consideration. Thus, we confirm the order of the CIT(A) in all the years."

In view of the above, Hon'ble ITAT confirmed the order of CIT(A) who had deleted the addition made by AO by disallowing the deduction claimed on account of interest received from other Co-operative societies. Thus, in the case of appellant also, the proportionate disallowance of interest and dividend cannot be held sustainable.

5.1 The next issue, to be decided, is that whether deduction u/s.80P(2)(d) is available on the gross amount or the net amount. The appellant has claimed the gross amount of Rs.3,34,73,194/- u/s.80P(2)(d) which includes interest income of

*Rs.2,53,22,819/- and dividend income of Rs.81,00,375/- received from other Co-operative societies. However, in the computation of income, appellant has restricted the deduction at Rs.1,40,52,159/- which is its net income. Section 80AB of the Act stipulates that where any deduction is required to be allowed under any section included in Chapter VI-A, the amount of income computed in accordance with the provisions of this Act alone be deemed to be the amount of income which is derived and received by the assessee and which is included in his gross total income. Thus, the appellant is eligible to avail deduction on the net income i.e. after allowing expenses from the gross amount, as deduction under any section in Chapter VI-A which includes 80P(2)(d) of the Act. The net income in the case of appellant is Rs.1,40,52,159/- which is allowable as deduction u/s.80P(2)(d) of the Act.*

5.2 *In view of above discussion, I hold that the appellant is eligible for deduction u/s.80P(2)(d) of the Act at Rs.1,40,52,159/- in place of Rs.22,24,361/- allowed by AO.*

**6.** On the other hand, Ld.Senior Departmental Representative (DR) for the Revenue relied heavily on the order of AO.

**7.** Per Contra, at the outset, Ld. Counsel for the assessee submitted that the issue raised by the Revenue now stands decided against the Revenue by the of decision of Surat Bench of the Tribunal (camp at Surat) in the assessee's own case in ITA No.2166/Ahd/2014 for the A.Y. 2009-10 dated 18.04.2017.

**8.** We heard both the sides, we find that there is not direct specific or definite expenditure factually incurred to earn income of dividend and or intent from investments with other co-operative societies eligible for deduction u/s.80P(2)(d) of the Act, hence, the action of the AO in assuming expenditure alleged to have incurred or deemed to have incurred for earning dividend, without bring any evidence or record to prove the nexus between expenditure disallowed and dividend/interest income earned from investment with other co-operative societies in

wholly arbitrary imaginary, hence, not sustainable in law. It is seen that the assessee has been statutorily investing its surplus fund from the year 1992 with other co-operative societies including co-operative banks. On such investment, the assessee is receiving interest and dividend which has been claimed as deduction u/s.80P(2)(d) of the Act. It is evident that there is no direct nexus between such expenses and interest and dividend. The prorated allocation of interest expenditure resulting in part disallowance of deduction has been done without examining the issue in details. Therefore, in absence of any expenses directly or indirectly co-related to such income, the part disallowance of deduction is not satisfied. In view of this matter, we do not find any fault in the order of CIT(A), hence, same is upheld.

9. The issue raised in the present appeal is against the claim of deduction u/s. 80P(2)(d) of the Act on the interest income earned from Co-operative banks. It is undisputed fact that the assessee is a Credit Co-operative Society and received advances and loans from its members, on which interest was being received and paid. We find that the Surat Bench of the Tribunal (camp at Surat), on the similar issue, in assessee's own case vide ITA No.2166/Ahd/2014 dated 18.04.2017 for the A.Y. 2009-10 held the issue in favour of the assessee by dismissing the appeal filed by the Revenue as under:

*"5. We have heard rival contentions and perused the material furnished by the Id.Counsel containing judicial pronouncements, written submission made before the Id.CIT(A), audit reports etc. We have noticed that the assessee has been statutorily*

*investing its surplus fund from the year 1992 with other Co-operative Societies which include Co-operative Banks and on such investments, the appellant has been receiving interest and dividend which has been claimed as deduction u/s.80P(2)(d) of the Act. We find that the provision of section 80P(4) is not applicable to the assessee, because section 80P(4) says that provision of this section shall not apply in relation to Co-op Bank other than Primary Agricultural Credit Societies or a primary Co-operative Agricultural and Rural Development Bank. Regarding eligibility for receiving interest received from the co-operative bank we have noticed from the judicial pronouncement in the case of Surat Vankar Sahakari Sangh Ltd. vs. Assistant Commissioner of Income Tax (2016) 72 taxmann.com 169 (Guj) in which the Hon'ble High Court of Gujarat held as under :-*

*“8. Section 80P(2)(d) of the Act allows whole deduction of an income by way of interest or dividends ‘derived by the co-operative society from its investment with any other co-operative society from its investment with any other co-operative society. This provision does not make any distinction in regard to source of the investment because this Section envisages deduction in respect of any income derived by the co-operative society from any investment with a co-operative society. It is immaterial whether any interest paid to the co-operative society exceeds the interest received from the bank on investments. The Revenue is not required to look to the nature of the investment whether it was from its surplus funds or otherwise. The Act does not speak of any adjustment as sought to be made out by learned counsel for the Revenue. The provision does not indicate any such adjustment in regard to interest derived from the co-operative society from its investment in any other co-operative society. Therefore, we do not agree with the argument advanced by learned counsel for the Revenue. In our opinion, the learned Tribunal was right in law in allowing deduction under Section 80P(2)(d) of the Income-tax Act, 1961. In respect of interest of Rs.4,00,919 on account of interest received from Nawanshaln Central Co-operative Bank without adjusting the interest paid to the hank. Therefore, the reference is answered against the Revenue in the affirmative and in favour of the assessee.”*

*We have further noticed from the finding of the Ld.CIT(A) that the assessee has claimed the gross amount of Rs.4,05,40,653/- u/s.80P(2)(d) which includes interest income of Rs.3,24,40,278/- and dividend income of Rs.81,00,375/- received from other Co-operative societies. However, in the computation of income, assessee has restricted the deduction to Rs.1,36,41,639/- which was net income. Therefore, we considered that the Ld.CIT(A) is justified in his decision that the net income in the case of assessee of Rs.1,36,41,639/- allowable as deduction u/s.80P(2)(d) of the Act. In view of the above stated facts and details findings of the Ld.CIT(A) given in his order, we disinclined to interfere in the decision of Ld.CIT(A).*

*6. In the result, the appeal of the revenue is dismissed.”*

**10.** In the light of the above, we find that there is no direct nexus between expenditure related to part disallowance, hence, findings of CIT(A) are upheld. It is further apparent that the assessee is entitled to deduction u/s.80P(2)(d) in respect of the interest income earned from Co-operative Societies are eligible for deduction. Therefore, we

do not find any infirmity in the order of Id.CIT(A), and we upheld the same, accordingly, the above ground no.1 to 6 raised by the Revenue are dismissed.

**11.** In the result, appeal of the Revenue is dismissed.

**12.** The order pronounced in the open Court on 28-06-2018.

Sd/-

(सी.एम.गर्ग /C.M. GARG)

न्यायिकसदस्यतथा/JUDICIAL MEMBER लेखासदस्यकेसमक्ष /ACCOUNTANT MEMBER

सुरत/ Surat, दिनांक Dated: 28<sup>th</sup> June, 2018

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

**By order**

/ / TRUE COPY / /

**Assistant Registrar, Surat**